

Calendar No. 474

111TH CONGRESS
2^D SESSION**S. 1346**

To penalize crimes against humanity, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2009

Mr. DURBIN (for himself, Mr. LEAHY, Mr. FEINGOLD, Mr. CARDIN, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 21, 2010

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To penalize crimes against humanity, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Crimes Against Hu-
5 manity Act of 2009”.

1 **SEC. 2. ACCOUNTABILITY FOR CRIMES AGAINST HUMAN-**
 2 **ITY.**

3 (a) IN GENERAL.—Part 1 of title 18, United States
 4 Code, is amended by inserting after chapter 25 the fol-
 5 lowing:

6 **“CHAPTER 25A—CRIMES AGAINST**
 7 **HUMANITY**

“Sec.

“519. Crimes against humanity.

8 **“§ 519. Crimes against humanity**

9 “(a) OFFENSE.—It shall be unlawful for any person
 10 to commit or engage in, as part of a widespread and sys-
 11 tematic attack directed against any civilian population,
 12 and with knowledge of the attack—

13 “(1) conduct that, if it occurred in the United
 14 States, would violate—

15 “(A) section 1111 of this title (relating to
 16 murder);

17 “(B) section 1581(a) of this title (relating
 18 to peonage);

19 “(C) section 1583(a)(1) of this title (relat-
 20 ing to kidnapping or carrying away individuals
 21 for involuntary servitude or slavery);

22 “(D) section 1584(a) of this title (relating
 23 to sale into involuntary servitude);

1 “(E) section 1589(a) of this title (relating
2 to forced labor); or

3 “(F) section 1590(a) of this title (relating
4 to trafficking with respect to peonage, slavery,
5 involuntary servitude, or forced labor);

6 “(2) conduct that, if it occurred in the special
7 maritime and territorial jurisdiction of the United
8 States, would violate—

9 “(A) section 1591(a) of this title (relating
10 to sex trafficking of children or by force, fraud,
11 or coercion);

12 “(B) section 2241(a) of this title (relating
13 to aggravated sexual abuse by force or threat);
14 or

15 “(C) section 2242 of this title (relating to
16 sexual abuse);

17 “(3) conduct that, if it occurred in the special
18 maritime and territorial jurisdiction of the United
19 States, and without regard to whether the offender
20 is the parent of the victim, would violate section
21 1201(a) of this title (relating to kidnapping);

22 “(4) conduct that, if it occurred in the United
23 States, would violate section 1203(a) of this title (re-
24 lating to hostage taking), notwithstanding any ex-
25 ception under subsection (b) of section 1203;

1 ~~“(5) conduct that would violate section 2340A~~
 2 ~~of this title (relating to torture);~~

3 ~~“(6) extermination;~~

4 ~~“(7) national, ethnic, racial, or religious cleans-~~
 5 ~~ing;~~

6 ~~“(8) arbitrary detention; or~~

7 ~~“(9) imposed measures intended to prevent~~
 8 ~~births.~~

9 ~~“(b) PENALTY.—Any person who violates subsection~~
 10 ~~(a), or attempts or conspires to violate subsection (a)—~~

11 ~~“(1) shall be fined under this title, imprisoned~~
 12 ~~not more than 20 years, or both; and~~

13 ~~“(2) if the death of any person results from the~~
 14 ~~violation of subsection (a), shall be fined under this~~
 15 ~~title and imprisoned for any term of years or for life.~~

16 ~~“(c) JURISDICTION.—There is jurisdiction over a vio-~~
 17 ~~lation of subsection (a), and any attempt or conspiracy~~
 18 ~~to commit a violation of subsection (a), if—~~

19 ~~“(1) the alleged offender is a national of the~~
 20 ~~United States or an alien lawfully admitted for per-~~
 21 ~~manent residence;~~

22 ~~“(2) the alleged offender is a stateless person~~
 23 ~~whose habitual residence is in the United States;~~

1 “(3) the alleged offender is present in the
2 United States, regardless of the nationality of the al-
3 leged offender; or

4 “(4) the offense is committed in whole or in
5 part within the United States.

6 “(d) NONAPPLICABILITY OF CERTAIN LIMITA-
7 TIONS.—Notwithstanding section 3282 of this title, in the
8 case of an offense under this section, an indictment may
9 be found, or information instituted, at any time without
10 limitation.

11 “(e) DEFINITIONS.—In this section:

12 “(1) ARBITRARY DETENTION.—The term ‘arbi-
13 trary detention’ means imprisonment or other severe
14 deprivation of physical liberty except on such
15 grounds and in accordance with such procedure as
16 are established by the law of the jurisdiction where
17 such imprisonment or other severe deprivation of
18 physical liberty took place.

19 “(2) ARMED GROUP.—The term ‘armed group’
20 means any army, militia, or other military organiza-
21 tion, whether or not it is State-sponsored, excluding
22 any group assembled solely for nonviolent political
23 association.

24 “(3) ATTACK DIRECTED AGAINST ANY CIVILIAN
25 POPULATION.—The term ‘attack directed against

any civilian population' means a course of conduct in which a civilian population is a primary rather than an incidental target.

“(4) ~~ETHNIC GROUP; NATIONAL GROUP; RACIAL GROUP; RELIGIOUS GROUP.~~—The terms ‘ethnic group’, ‘national group’, ‘racial group’, and ‘religious group’ have the meanings given those terms in section 1093 of this title.

“(5) ~~EXTERMINATION.~~—The term ‘extermination’ means subjecting a civilian population to conditions of life that are intended to cause the physical destruction of the group in whole or in part.

“(6) ~~LAWFULLY ADMITTED FOR PERMANENT RESIDENCE; NATIONAL OF THE UNITED STATES.~~—The terms ‘lawfully admitted for permanent residence’ and ‘national of the United States’ have the meanings give those terms in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

“(7) ~~NATIONAL; ETHNIC; RACIAL; OR RELIGIOUS CLEANSING.~~—The term ‘national, ethnic, racial, or religious cleansing’ means the intentional and forced displacement from 1 country to another or within a country of any national group, ethnic group, racial group, or religious group in whole or

1 in part, by expulsion or other coercive acts from the
 2 area in which they are lawfully present, except when
 3 the displacement is in accordance with applicable
 4 laws of armed conflict that permit involuntary and
 5 temporary displacement of a population to ensure its
 6 security or when imperative military reasons so de-
 7 mand.

8 “(8) **SYSTEMATIC.**—The term ‘systematic’
 9 means pursuant to or in furtherance of the policy of
 10 a State or armed group.

11 “(9) **WIDESPREAD.**—The term ‘widespread’
 12 means involving multiple victims.”.

13 (b) **CLERICAL AMENDMENT.**—The table of chapters
 14 for part 1 of title 18, United States Code, is amended by
 15 inserting after the item relating to chapter 25 the fol-
 16 lowing:

“25A. Crimes against humanity 519”.

17 **SECTION 1. SHORT TITLE.**

18 *This Act may be cited as the “Crimes Against Human-*
 19 *ity Act of 2010”.*

20 **SEC. 2. ACCOUNTABILITY FOR CRIMES AGAINST HUMANITY.**

21 (a) **IN GENERAL.**—Part 1 of title 18, United States
 22 Code, is amended by inserting after chapter 25 the fol-
 23 lowing:

1 **“CHAPTER 25A—CRIMES AGAINST**
 2 **HUMANITY**

“Sec.

“519. Crimes against humanity.

3 **“§ 519. Crimes against humanity**

4 “(a) OFFENSE.—It shall be unlawful for any person
 5 to commit or engage in, as part of a widespread and sys-
 6 tematic attack directed against any civilian population,
 7 and with knowledge of the attack—

8 “(1) conduct that, if it occurred in the United
 9 States, would violate—

10 “(A) section 1581(a) of this title (relating to
 11 peonage);

12 “(B) section 1583(a)(1) of this title (relat-
 13 ing to kidnapping or carrying away individuals
 14 for involuntary servitude or slavery);

15 “(C) section 1584(a) of this title (relating to
 16 sale into involuntary servitude);

17 “(D) section 1589(a) of this title (relating
 18 to forced labor); or

19 “(E) section 1590(a) of this title (relating to
 20 trafficking with respect to peonage, slavery, in-
 21 voluntary servitude, or forced labor);

22 “(2) conduct that, if it occurred in the special
 23 maritime and territorial jurisdiction of the United
 24 States, would violate—

1 “(A) section 1111 of this title (relating to
2 murder);

3 “(B) section 1591(a) of this title (relating to
4 sex trafficking of children or by force, fraud, or
5 coercion);

6 “(C) section 2241(a) of this title (relating to
7 aggravated sexual abuse by force or threat); or

8 “(D) section 2242 of this title (relating to
9 sexual abuse);

10 “(3) conduct that, if it occurred in the special
11 maritime and territorial jurisdiction of the United
12 States, and without regard to whether the offender is
13 the parent of the victim, would violate section 1201(a)
14 of this title (relating to kidnapping);

15 “(4) conduct that, if it occurred in the United
16 States, would violate section 1203(a) of this title (re-
17 lating to hostage taking), notwithstanding any excep-
18 tion under subsection (b) of section 1203;

19 “(5) conduct that would violate section 2340A of
20 this title (relating to torture);

21 “(6) extermination;

22 “(7) national, ethnic, racial, or religious cleans-
23 ing; or

24 “(8) imposed measures intended to prevent
25 births.

1 “(b) *PENALTY.*—Any person who violates subsection
2 (a), or attempts or conspires to violate subsection (a)—

3 “(1) shall be fined under this title, imprisoned
4 not more than 20 years, or both; and

5 “(2) if the death of any person results from the
6 violation of subsection (a), shall be fined under this
7 title and imprisoned for any term of years or for life.

8 “(c) *JURISDICTION.*—There is jurisdiction over a vio-
9 lation of subsection (a), and any attempt or conspiracy to
10 commit a violation of subsection (a), if—

11 “(1) the alleged offender is a national of the
12 United States or an alien residing in the United
13 States, regardless of whether the alien is lawfully ad-
14 mitted for permanent residence;

15 “(2) the alleged offender is a stateless person
16 whose habitual residence is in the United States; or

17 “(3) the offense is committed in whole or in part
18 within the United States.

19 “(d) *NONAPPLICABILITY OF CERTAIN LIMITATIONS.*—
20 Notwithstanding section 3282 of this title, in the case of
21 an offense under this section, an indictment may be found,
22 or information instituted, at any time without limitation.

23 “(e) *LIMITATION ON PROSECUTION.*—

1 “(1) *IN GENERAL.*—A prosecution for an offense
2 described in this section may not be undertaken by
3 the United States unless—

4 “(A) the Attorney General certifies in writ-
5 ing—

6 “(i) after consultation with the Sec-
7 retary of State and the Secretary of Home-
8 land Security, that there is no foreign juris-
9 diction that is prepared to undertake a
10 prosecution for the conduct that forms the
11 basis for the offense; and

12 “(ii) that a prosecution by the United
13 States is in the public interest and nec-
14 essary to secure substantial justice; and

15 “(B) the Secretary of State, the Secretary of
16 Defense, and the Director of National Intel-
17 ligence do not object to the prosecution.

18 “(2) *NONDELEGATION.*—The certification under
19 paragraph (1)(A) may not be delegated.

20 “(3) *NO JUDICIAL REVIEW.*—A certification by
21 the Attorney General under this subsection is not sub-
22 ject to judicial review.

23 “(f) *NO LIMITATION ON CONDUCT PURSUANT TO THE*
24 *LAWS OF WAR.*—Nothing in this section shall be construed
25 to make unlawful conduct pursuant to the laws of war.

1 “(g) *NO LIMITATION ON DEFENSES OR IMMUNITIES.*—
 2 *Nothing in this section shall be construed to limit or extin-*
 3 *guish any defense or immunity otherwise available to any*
 4 *person or entity.*

5 “(h) *INTERNATIONAL CRIMINAL COURT AND AMERICAN*
 6 *SERVICEMEMBERS’ PROTECTION ACT OF 2002.*—*Nothing in*
 7 *this section shall be construed as support for ratification*
 8 *of, or participation by the United States in, the Rome Stat-*
 9 *ute of the International Criminal Court, which entered into*
 10 *force on July 1, 2002, or to repeal or limit the applicability*
 11 *of the American Servicemembers’ Protection Act of 2002 (22*
 12 *U.S.C. 7421 et seq.).*

13 “(i) *DEFINITIONS.*—*In this section:*

14 “(1) *ARMED GROUP.*—*The term ‘armed group’*
 15 *means any army, militia, or other military organiza-*
 16 *tion, whether or not it is state-sponsored, excluding*
 17 *any group assembled solely for nonviolent political*
 18 *association.*

19 “(2) *ATTACK DIRECTED AGAINST ANY CIVILIAN*
 20 *POPULATION.*—*The term ‘attack directed against any*
 21 *civilian population’ means a course of conduct in*
 22 *which the country or armed group carrying out the*
 23 *attack intends a civilian population as such to be a*
 24 *primary rather than an incidental target.*

1 “(3) *ETHNIC GROUP; NATIONAL GROUP; RACIAL*
 2 *GROUP; RELIGIOUS GROUP.—The terms ‘ethnic group’,*
 3 *‘national group’, ‘racial group’, and ‘religious group’*
 4 *have the meanings given those terms in section 1093*
 5 *of this title.*

6 “(4) *EXTERMINATION.—The term ‘extermination’*
 7 *means subjecting a civilian population to conditions*
 8 *of life that are intended to cause the physical destruc-*
 9 *tion of the group in whole or in part.*

10 “(5) *LAWFULLY ADMITTED FOR PERMANENT*
 11 *RESIDENCE; NATIONAL OF THE UNITED STATES.—The*
 12 *terms ‘lawfully admitted for permanent residence’*
 13 *and ‘national of the United States’ have the meanings*
 14 *give those terms in section 101(a) of the Immigration*
 15 *and Nationality Act (8 U.S.C. 1101(a)).*

16 “(6) *NATIONAL, ETHNIC, RACIAL, OR RELIGIOUS*
 17 *CLEANSING.—The term ‘national, ethnic, racial, or*
 18 *religious cleansing’ means the intentional and forced*
 19 *displacement from 1 country to another or within a*
 20 *country of any national group, ethnic group, racial*
 21 *group, or religious group in whole or in part, by ex-*
 22 *pulsion or other coercive acts intended to displace*
 23 *such group from the area in which they are lawfully*
 24 *present, except when the displacement is in accord-*
 25 *ance with applicable laws of armed conflict that per-*

1 *mit involuntary and temporary displacement of a*
 2 *population to ensure its security or when imperative*
 3 *military reasons so demand.*

4 “(7) *SYSTEMATIC*.—The term ‘systematic’ means
 5 *pursuant to or in furtherance of the policy of a coun-*
 6 *try or armed group. To constitute a policy, the coun-*
 7 *try or armed group must have actively promoted the*
 8 *policy.*

9 “(8) *WIDESPREAD*.—The term ‘widespread’
 10 *means involving not less than 50 victims.”.*

11 (b) *CLERICAL AMENDMENT*.—The table of chapters for
 12 *part 1 of title 18, United States Code, is amended by insert-*
 13 *ing after the item relating to chapter 25 the following:*

 “25A. *Crimes against humanity* 519”.

14 (c) *APPLICABILITY*.—The amendments made by this
 15 *Act shall take effect on the date of enactment of this Act*
 16 *and apply to conduct committed on or after the date of en-*
 17 *actment of this Act.*

Calendar No. 474

11TH CONGRESS
2^D Session

S. 1346

A BILL

To penalize crimes against humanity, and for other purposes.

JULY 21, 2010

Reported with an amendment